

Under this election, the increase under paragraph (c) of this section is determined only with respect to that payment and all previous payments for which an election was available but not made. Payments for which an election applies are treated as having been paid on their due dates for purposes of subsequent taxable events. The election is revocable only with the consent of the Commissioner.

(2) *Limitation not applicable.* If a taxable event occurs by reason of an election described in paragraph (d)(1) of this section, the limitation described in paragraph (c)(6) of this section does not apply.

(3) *Time and manner of election*—(i) *Timely-filed returns.* The election may be made by attaching a statement to a Form 709, Federal Gift Tax Return, filed by the recipient of the qualified payment on a timely basis for the year in which the qualified payment is received. In that case, the taxable event is deemed to occur on the date the qualified payment is received.

(ii) *Election on late returns.* The election may be made by attaching a statement to a Form 709, Federal Gift Tax Return, filed by the recipient of the qualified payment other than on a timely basis for the year in which the qualified payment is received. In that case, the taxable event is deemed to occur on the first day of the month immediately preceding the month in which the return is filed. If an election, other than an election on a timely return, is made after the death of the interest holder, the taxable event with respect to the decedent is deemed to occur on the later of—

(A) The date of the recipient's death, or

(B) The first day of the month immediately preceding the month in which the return is filed.

(iii) *Requirements of statement.* The statement must—

(A) Provide the name, address, and taxpayer identification number of the electing individual and the interest holder, if different;

(B) Indicate that a taxable event election is being made under paragraph (d) of this section;

(C) Disclose the nature of the qualified payment right to which the elec-

tion applies, including the due dates of the payments, the dates the payments were made, and the amounts of the payments;

(D) State the name of the transferor, the date of the transfer to which section 2701 applied, and the discount rate used in valuing the qualified payment right; and

(E) State the resulting amount of increase in taxable gifts.

(4) *Example.* The following example illustrates the rules of this paragraph (d).

*Example.* A holds cumulative preferred stock that A retained in a transfer to which section 2701 applied. No dividends were paid in years 1 through 5 following the transfer. In year 6, A received a qualified payment that, pursuant to paragraph (c)(3) of this section, is considered to be in satisfaction of the unpaid qualified payment for year 1. No election was made to treat that payment as a taxable event. In year 7, A receives a qualified payment that, pursuant to paragraph (c)(4) of this section, is considered to be in satisfaction of the unpaid qualified payment for year 2. A elects to treat the payment in year 7 as a taxable event. The election increases A's taxable gifts in year 7 by the amount computed under paragraph (c) of this section with respect to the payments due in both year 1 and year 2. For purposes of any future taxable events, the payments with respect to years 1 and 2 are treated as having been made on their due dates.

[T.D. 8395, 57 FR 4261, Feb. 4, 1992]

#### § 25.2701-5 Adjustments to mitigate double taxation.

(a) *Reduction of transfer tax base*—(1) *In general.* This section provides rules under which an individual (the initial transferor) making a transfer subject to section 2701 (the initial transfer) is entitled to reduce his or her taxable gifts or adjusted taxable gifts (the reduction). The amount of the reduction is determined under paragraph (b) of this section. See paragraph (e) of this section if section 2513 (split gifts) applied to the initial transfer.

(2) *Federal gift tax modification.* If, during the lifetime of the initial transferor, the holder of a section 2701 interest (as defined in paragraph (a)(4) of this section) transfers the interest to or for the benefit of an individual other than the initial transferor or an applicable family member of the initial

transferor in a transfer subject to Federal estate or gift tax, the initial transferor may reduce the amount on which the initial transferor's tentative tax is computed under section 2502(a). The reduction is first applied on any gift tax return required to be filed for the calendar year in which the section 2701 interest is transferred; any excess reduction is carried forward and applied in each succeeding calendar year until the reduction is exhausted. The amount of the reduction that is used in a calendar year is the amount of the initial transferor's taxable gifts for that year. Any excess reduction remaining at the death of the initial transferor may be applied by the executor of the initial transferor's estate as provided under paragraph (a)(3) of this section. See paragraph (a)(4) of this section for the definition of a section 2701 interest. See § 25.2701-6 for rules relating to indirect ownership of equity interests transferred to trusts and other entities.

(3) *Federal estate tax modification.* Except as otherwise provided in this paragraph (a)(3), in determining the Federal estate tax with respect to an initial transferor, the executor of the initial transferor's estate may reduce the amount on which the decedent's tentative tax is computed under section 2001(b) (or section 2101(b)) by the amount of the reduction (including any excess reduction carried forward under paragraph (a)(2) of this section). The amount of the reduction under this paragraph (a)(3) is limited to the amount that results in zero Federal estate tax with respect to the estate of the initial transferor.

(4) *Section 2701 interest.* A section 2701 interest is an applicable retained interest that was valued using the special valuation rules of section 2701 at the time of the initial transfer. However, an interest is a section 2701 interest only to the extent the transfer of that interest effectively reduces the aggregate ownership of such class of interest by the initial transferor and applicable family members of the initial transferor below that held by such persons at the time of the initial transfer (or the remaining portion thereof).

(b) *Amount of reduction.* Except as otherwise provided in paragraphs (c)(3)(iv) (pertaining to transfers of

partial interests) and (e) (pertaining to initial split gifts) of this section, the amount of the reduction is the lesser of—

(1) The amount by which the initial transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer; or

(2) The amount (determined under paragraph (c) of this section) duplicated in the transfer tax base at the time of the transfer of the section 2701 interest (the duplicated amount).

(c) *Duplicated amount—*(1) *In general.* The duplicated amount is the amount by which the transfer tax value of the section 2701 interest at the time of the subsequent transfer exceeds the value of that interest determined under section 2701 at the time of the initial transfer. If, at the time of the initial transfer, the amount allocated to the transferred interest under § 25.2701-3(b)(3) (*Step 3* of the valuation methodology) is less than the entire amount available for allocation at that time, the duplicated amount is a fraction of the amount described in the preceding sentence. The numerator of the fraction is the amount allocated to the transferred interest at the time of the initial transfer (pursuant to § 25.2701-3(b)(3)) and the denominator of the fraction is the amount available for allocation at the time of the initial transfer (determined after application of § 25.2701-3(b)(2)).

(2) *Transfer tax value—in general.* Except as provided in paragraph (c)(3) of this section, for purposes of paragraph (c)(1) of this section the transfer tax value of a section 2701 interest is the value of that interest as finally determined for Federal transfer tax purposes under chapter 11 or chapter 12, as the case may be (including the right to receive any distributions thereon (other than qualified payments)), reduced by the amount of any deduction allowed with respect to the section 2701 interest to the extent that the deduction would not have been allowed if the section 2701 interest were not included in the transferor's total amount of gifts for the calendar year or the transferor's gross estate, as the case may be. Rules similar to the rules of section 691(c)(2)(C) are applicable to determine the extent that a deduction would not

be allowed if the section 2701 interest were not so included.

(3) *Special transfer tax value rules*—(i) *Transfers for consideration.* Except as provided in paragraph (c)(3)(iii) of this section, if, during the life of the initial transferor, a section 2701 interest is transferred to or for the benefit of an individual other than the initial transferor or an applicable family member of the initial transferor for consideration in money or money's worth, or in a transfer that is treated as a transfer for consideration in money or money's worth, the transfer of the section 2701 interest is deemed to occur at the death of the initial transferor. In this case, the estate of the initial transferor is entitled to a reduction in the same manner as if the initial transferor's gross estate included a section 2701 interest having a chapter 11 value equal to the amount of consideration in money or money's worth received in the exchange (determined as of the time of the exchange).

(ii) *Interests held by applicable family members at date of initial transferor's death.* If a section 2701 interest in existence on the date of the initial transferor's death is held by an applicable family member and, therefore, is not included in the gross estate of the initial transferor, the section 2701 interest is deemed to be transferred at the death of the initial transferor to or for the benefit of an individual other than the initial transferor or an applicable family member of the initial transferor. In this case, the transfer tax value of that interest is the value that the executor of the initial transferor's estate can demonstrate would be determined under chapter 12 if the interest were transferred immediately prior to the death of the initial transferor.

(iii) *Nonrecognition transactions.* If an individual exchanges a section 2701 interest in a nonrecognition transaction (within the meaning of section 7701(a)(45)), the exchange is not treated as a transfer of a section 2701 interest and the transfer tax value of that interest is determined as if the interest received in exchange is the section 2701 interest.

(iv) *Transfer of less than the entire section 2701 interest.* If a transfer is a transfer of less than the entire section

2701 interest, the amount of the reduction under paragraph (a)(2) or (a)(3) of this section is reduced proportionately.

(v) *Multiple classes of section 2701 interest.* For purposes of paragraph (b) of this section, if more than one class of section 2701 interest exists, the amount of the reduction is determined separately with respect to each such class.

(vi) *Multiple initial transfers.* If an initial transferor has made more than one initial transfer, the amount of the reduction with respect to any section 2701 interest is the sum of the reductions computed under paragraph (b) of this section with respect to each such initial transfer.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (a) through (c) of this section.

*Facts.* (1) *In general.* (i) P, an individual, holds 1,500 shares of \$1,000 par value preferred stock of X corporation (bearing an annual noncumulative dividend of \$100 per share that may be put to X at any time for par value) and 1,000 shares of voting common stock of X. There is no other outstanding common stock of X.

(ii) On January 15, 1991, when the aggregate fair market value of the preferred stock is \$1,500,000 and the aggregate fair market value of the common stock is \$500,000, P transfers common stock to P's child. The fair market value of P's interest in X (common and preferred) immediately prior to the transfer is \$2,000,000, and the section 2701 value of the preferred stock (the section 2701 interest) is zero. Neither P nor P's spouse, S, made gifts prior to 1991.

(2) *Additional facts applicable to Examples 1 through 3.* P's transfer consists of all 1,000 shares of P's common stock. With respect to the initial transfer, the amount remaining after Step 2 of the subtraction method of § 25.2701-3 is \$2,000,000 (\$2,000,000 minus zero), all of which is allocated to the transferred stock. P's aggregate taxable gifts for 1991 (including the section 2701 transfer) equal \$2,500,000.

(3) *Additional facts applicable to Examples 4 and 5.* P's initial transfer consists of one-half of P's common stock. With respect to the initial transfer in this case, only \$1,000,000 (one-half of the amount remaining after Step 2 of the subtraction method of § 25.2701-3) is allocated to the transferred stock. P's aggregate taxable gifts for 1991 (the section 2701 transfer and P's other transfers) equal \$2,500,000.

*Example 1. Inter vivos transfer of entire section 2701 interest.* (i) On October 1, 1994, at a time when the value of P's preferred stock is \$1,400,000, P transfers all of the preferred stock to P's child. In computing P's 1994 gift

tax, P, as the initial transferor, is entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) by \$1,400,000.

(ii) The amount of the reduction computed under paragraph (b) of this section is the lesser of \$1,500,000 (the amount by which the initial transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer) or \$1,400,000 (the duplicated amount). The duplicated amount is 100 percent (the portion of the section 2701 interest subsequently transferred) times \$1,400,000 (the amount by which the gift tax value of the preferred stock (\$1,400,000 at the time of the subsequent transfer) exceeds zero (the section 2701 value of the preferred stock at the time of the initial transfer)).

(iii) The result would be the same if the preferred stock had been held by P's parent, GM, and GM had, on October 1, 1994, transferred the preferred stock to or for the benefit of an individual other than P or an applicable family member of P. In that case, in computing the tax on P's 1994 and subsequent transfers, P would be entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) by \$1,400,000. If the value of P's 1994 gifts is less than \$1,400,000, P is entitled to claim the excess adjustment in computing the tax with respect to P's subsequent transfers.

*Example 2. Transfer of section 2701 interest at death of initial transferor.* (i) P continues to hold the preferred stock until P's death. The chapter 11 value of the preferred stock at the date of P's death is the same as the fair market value of the preferred stock at the time of the initial transfer. In computing the Federal estate tax with respect to P's estate, P's executor is entitled to a reduction of \$1,500,000 under paragraph (a)(3) of this section.

(ii) The result would be the same if P had sold the preferred stock to any individual other than an applicable family member at a time when the value of the preferred stock was \$1,500,000. In that case, the amount of the reduction is computed as if the preferred stock were included in P's gross estate at a fair market value equal to the sales price. If the value of P's taxable estate is less than \$1,500,000, the amount of the adjustment available to P's executor is limited to the actual value of P's taxable estate.

(iii) The result would also be the same if the preferred stock had been held by P's parent, GM, and at the time of P's death, GM had not transferred the preferred stock.

*Example 3. Transfer of after-acquired preferred stock.* On September 1, 1992, P purchases 100 shares of X preferred stock from an unrelated party. On October 1, 1994, P transfers 100 shares of X preferred stock to P's child. In computing P's 1994 gift tax, P is not entitled to reduce the amount on which

P's tentative tax is computed under section 2502(a) because the 1994 transfer does not reduce P's preferred stock holding below that held at the time of the initial transfer. See paragraph (a)(4) of this section.

*Example 4. Inter vivos transfer of entire section 2701 interest.* (i) On October 1, 1994, at a time when the value of P's preferred stock is \$1,400,000, P transfers all of the preferred stock to P's child. In computing P's 1994 gift tax, P, as the initial transferor, is entitled to reduce the amount on which P's tentative tax is computed under section 2502(a) by \$700,000.

(ii) The amount of the reduction computed under paragraph (b) of this section is the lesser of \$750,000 ( $(\$1,500,000 \times .5 (\$1,000,000 \text{ over } \$2,000,000))$  the amount by which the initial transferor's taxable gifts were increased as a result of the application of section 2701 to the initial transfer) or \$700,000 ( $(\$1,400,000 \times .5)$  the duplicated amount). The duplicated amount is 100 percent (the portion of the section 2701 interest subsequently transferred) times \$700,000; e.g., one-half (the fraction representing the portion of the common stock transferred in the initial transfer  $(\$1,000,000/\$2,000,000)$ ) of the amount by which the gift tax value of the preferred stock at the time of the subsequent transfer (\$1,400,000) exceeds zero (the section 2701 value of the preferred stock at the time of the initial transfer).

*Example 5. Subsequent transfer of less than the entire section 2701 interest.* On October 1, 1994, at a time when the value of P's preferred stock is \$1,400,000, P transfers only 250 of P's 1,000 shares of preferred stock to P's child. In this case, the amount of the reduction computed under paragraph (b) is \$175,000 (one-fourth  $(250/1,000)$  of the amount of the reduction available if P had transferred all 1,000 shares of preferred stock).

(e) *Computation of reduction if initial transfer is split under section 2513—(1) In general.* If section 2513 applies to the initial transfer (a split initial transfer), the special rules of this paragraph (e) apply.

(2) *Transfers during joint lives.* If there is a split initial transfer and the corresponding section 2701 interest is transferred during the joint lives of the donor and the consenting spouse, for purposes of determining the reduction under paragraph (a)(2) of this section each spouse is treated as if the spouse was the initial transferor of one-half of the split initial transfer.

(3) *Transfers at or after death of either spouse—(i) In general.* If there is a split initial transfer and the corresponding section 2701 interest is transferred at or after the death of the first spouse to

die, the reduction under paragraph (a)(2) or (a)(3) of this section is determined as if the donor spouse was the initial transferor of the entire initial transfer.

(ii) *Death of donor spouse.* Except as provided in paragraph (e)(3)(iv) of this section, the executor of the estate of the donor spouse in a split initial transfer is entitled to compute the reduction as if the donor spouse was the initial transferor of the section 2701 interest otherwise attributable to the consenting spouse. In this case, if the consenting spouse survives the donor spouse—

(A) The consenting spouse's aggregate sum of taxable gifts used in computing each tentative tax under section 2502(a) (and, therefore, adjusted taxable gifts under section 2001(b)(1)(B) (or section 2101(b)(1)(B)) and the tax payable on the consenting spouse's prior taxable gifts under section 2001(b)(2) (or section 2101(b)(2))) is reduced to eliminate the remaining effect of the section 2701 interest; and

(B) Except with respect to any excess reduction carried forward under paragraph (a)(2) of this section, the consenting spouse ceases to be treated as the initial transferor of the section 2701 interest.

(iii) *Death of consenting spouse.* If the consenting spouse predeceases the donor spouse, except for any excess reduction carried forward under paragraph (a)(2) of this section, the reduction with respect to any section 2701 interest in the split initial transfer is not available to the estate of the consenting spouse (regardless of whether the interest is included in the consenting spouse's gross estate). Similarly, if the consenting spouse predeceases the donor spouse, no reduction is available to the consenting spouse's adjusted taxable gifts under section 2001(b)(1)(B) (or section 2101(b)(1)(B)) or to the consenting spouse's gift tax payable under section 2001(b)(2) (or section 2101(b)(2)). See paragraph (a)(2) of this section for rules involving transfers by an applicable family member during the life of the initial transferor.

(iv) *Additional limitation on reduction.* If the donor spouse (or the estate of the donor spouse) is treated under this

paragraph (e) as the initial transferor of the section 2701 interest otherwise attributable to the consenting spouse, the amount of additional reduction determined under paragraph (b) of this section is the amount determined under that paragraph with respect to the consenting spouse. If a reduction was previously available to the consenting spouse under this paragraph (e), the amount determined under this paragraph (e)(3)(iv) with respect to the consenting spouse is determined as if the consenting spouse's taxable gifts in the split initial transfer had been increased only by that portion of the increase that corresponds to the remaining portion of the section 2701 interest. The amount of the additional reduction (i.e., the amount determined with respect to the consenting spouse) is limited to the amount that results in a reduction in the donor spouse's Federal transfer tax no greater than the amount of the increase in the consenting spouse's gift tax incurred by reason of the section 2701 interest (or the remaining portion thereof).

(f) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section. The examples assume the facts set out in this paragraph (f).

*Facts.* (1) In each example assume that P, an individual, holds 1,500 shares of \$1,000 par value preferred stock of X corporation (bearing an annual noncumulative dividend of \$100 per share that may be put to X at any time for par value) and 1,000 shares of voting common stock of X. There is no other outstanding stock of X. The annual exclusion under section 2503 is not allowable with respect to any gift.

(2) On January 15, 1991, when the aggregate fair market value of the preferred stock is \$1,500,000 and the aggregate fair market value of the common stock is \$500,000, P transfers all 1,000 shares of the common stock to P's child. Section 2701 applies to the initial transfer because P transferred an equity interest (the common stock) to a member of P's family and immediately thereafter held an applicable retained interest (the preferred stock). The fair market value of P's interest in X immediately prior to the transfer is \$2,000,000 and the section 2701 value of the preferred stock (the section 2701 interest) is zero. With respect to the initial transfer, the amount remaining after Step 2 of the subtraction method of § 25.2701-3 was \$2,000,000 (\$2,000,000 minus zero), all of which is allocated to the transferred stock. P had

made no gifts prior to 1991. The sum of P's aggregate taxable gifts for the calendar year 1991 (including the section 2701 transfer) is \$2,500,000. P's spouse, S, made no gifts prior to 1991.

(3) P and S elected pursuant to section 2513 to treat one-half of their 1991 gifts as having been made by each spouse. Without the application of section 2701, P and S's aggregate gifts would have been \$500,000 and each spouse would have paid no gift tax because of the application of the unified credit under section 2505. However, because of the application of section 2701, both P and S are each treated as the initial transferor of aggregate taxable gifts in the amount of \$1,250,000 and, after the application of the unified credit under section 2505, each paid \$255,500 in gift tax with respect to their 1991 transfers. On October 1, 1994, at a time when the value of the preferred stock is the same as at the time of the initial transfer, P transfers the preferred stock (the section 2701 interest) to P's child.

*Example 1. Inter vivos transfer of entire section 2701 interest.* P transfers all of the preferred stock to P's child. P and S are each entitled to a reduction of \$750,000 in computing their 1994 gift tax. P is entitled to the reduction because P subsequently transferred the one-half share of the section 2701 interest as to which P was the initial transferor to an individual who was not an applicable family member of P. S is entitled to the reduction because P, an applicable family member with respect to S, transferred the one-half share of the section 2701 interest as to which S was the initial transferor to an individual other than S or an applicable family member of S. S may claim the reduction against S's 1994 gifts. If S's 1994 taxable gifts are less than \$750,000, S may claim the remaining amount of the reduction against S's next succeeding lifetime transfers.

*Example 2. Inter vivos transfer of portion of section 2701 interest.* P transfers one-fourth of the preferred stock to P's child. In this case, P and S are each entitled to a reduction of \$187,500, the corresponding portion of the reduction otherwise available to each spouse (one-fourth of \$750,000).

*Example 3. Transfer at death of donor spouse.* P, the donor spouse in the section 2513 election, dies on October 1, 1994, while holding all of the preferred stock. The executor of P's estate is entitled to a reduction in the computation of the tentative tax under section 2001(b). Since no reduction had been previously available with respect to the section 2701 interest, P's estate is entitled to a full reduction of \$750,000 with respect to the one-half share of the preferred stock as to which P was the initial transferor. In addition, P's estate is entitled to an additional reduction of up to \$750,000 for the remaining section 2701 interest as to which S was the initial transferor. The reduction for the consenting

spouse's remaining section 2701 interest is limited to that amount that will produce a tax saving in P's Federal estate tax of \$255,500, the amount of gift tax incurred by S by reason of the application of section 2701 to the split initial transfer.

*Example 4. Transfer after death of donor spouse.* The facts are the same as in *Example 3*, except that S acquires the preferred stock from P's estate and subsequently transfers the preferred stock to S's child. S is not entitled to a reduction because S ceased to be an initial transferor upon P's death (and S's prior taxable gifts were automatically adjusted at that time to the level that would have existed had the split initial transfer not been subject to section 2701).

*Example 5. Death of donor spouse after inter vivos transfer.* (i) P transfers one-fourth of the preferred stock to P's child. In this case, P and S are each entitled to a reduction of \$187,500, the corresponding portion of the reduction otherwise available to each spouse (one-fourth of \$750,000). S may claim the reduction against S's 1994 or subsequent transfers. P dies on November 1, 1994.

(ii) P's executor is entitled to include, in computing the reduction available to P's estate, the remaining reduction to which P is entitled and an additional amount of up to \$562,500 (\$750,000 minus \$187,500, the amount of the remaining reduction attributable to the consenting spouse determined immediately prior to P's death). The amount of additional reduction available to P's estate cannot exceed the amount that will reduce P's estate tax by \$178,625, the amount that S's 1991 gift tax would have been increased if the application of section 2701 had increased S's taxable gifts by only \$562,500 (\$750,000 - \$187,500).

(g) *Double taxation otherwise avoided.* No reduction is available under this section if—

(1) Double taxation is otherwise avoided in the computation of the estate tax under section 2001 (or section 2101); or

(2) A reduction was previously taken under the provisions of section 2701(e)(6) with respect to the same section 2701 interest and the same initial transfer.

(h) *Effective date.* This section is effective for transfers of section 2701 interests after May 4, 1994. If the transfer of a section 2701 interest occurred on or before May 4, 1994, the initial transferor may rely on either this section, project PS-30-91 (1991-2 C.B. 1118, and 1992-1 C.B. 1239 (see § 601.601(d)(2)(ii)(b)

of this chapter)) or any other reasonable interpretation of the statute.

[T.D. 8536, 59 FR 23154, May 5, 1994]

**§ 25.2701-6 Indirect holding of interests.**

(a) *In general*—(1) *Attribution to individuals.* For purposes of section 2701, an individual is treated as holding an equity interest to the extent the interest is held indirectly through a corporation, partnership, estate, trust, or other entity. If an equity interest is treated as held by a particular individual in more than one capacity, the interest is treated as held by the individual in the manner that attributes the largest total ownership of the equity interest. An equity interest held by a lower-tier entity is attributed to higher-tier entities in accordance with the rules of this section. For example, if an individual is a 50-percent beneficiary of a trust that holds 50 percent of the preferred stock of a corporation, 25 percent of the preferred stock is considered held by the individual under these rules.

(2) *Corporations.* A person is considered to hold an equity interest held by or for a corporation in the proportion that the fair market value of the stock the person holds bears to the fair market value of all the stock in the corporation (determined as if each class of stock were held separately by one individual). This paragraph applies to any entity classified as a corporation or as an association taxable as a corporation for federal income tax purposes.

(3) *Partnerships.* A person is considered to hold an equity interest held by or for a partnership in the proportion that the fair market value of the larger of the person's profits interest or capital interest in the partnership bears to the total fair market value of the corresponding profits interests or capital interests in the partnership, as the case may be (determined as if each class were held by one individual). This paragraph applies to any entity classified as a partnership for federal income tax purposes.

(4) *Estates, trusts and other entities*—(i) *In general.* A person is considered to hold an equity interest held by or for an estate or trust to the extent the person's beneficial interest therein may be

satisfied by the equity interest held by the estate or trust, or the income or proceeds thereof, assuming the maximum exercise of discretion in favor of the person. A beneficiary of an estate or trust who cannot receive any distribution with respect to an equity interest held by the estate or trust, including the income therefrom or the proceeds from the disposition thereof, is not considered the holder of the equity interest. Thus, if stock held by a decedent's estate has been specifically bequeathed to one beneficiary and the residue of the estate has been bequeathed to other beneficiaries, the stock is considered held only by the beneficiary to whom it was specifically bequeathed. However, any person who may receive distributions from a trust is considered to hold an equity interest held by the trust if the distributions may be made from current or accumulated income from or the proceeds from the disposition of the equity interest, even though under the terms of the trust the interest can never be distributed to that person. This paragraph applies to any entity that is not classified as a corporation, an association taxable as a corporation, or a partnership for federal income tax purposes.

(ii) *Special rules*—(A) Property is held by a decedent's estate if the property is subject to claims against the estate and expenses of administration.

(B) A person holds a beneficial interest in a trust or an estate so long as the person may receive distributions from the trust or the estate other than payments for full and adequate consideration.

(C) An individual holds an equity interest held by or for a trust if the individual is considered an owner of the trust (a "grantor trust") under subpart E, part 1, subchapter J of the Internal Revenue Code (relating to grantors and others treated as substantial owners). However, if an individual is treated as the owner of only a fractional share of a grantor trust because there are multiple grantors, the individual holds each equity interest held by the trust, except to the extent that the fair market value of the interest exceeds the fair market value of the fractional share.